

# **EXHIBIT 5**

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF NEW YORK

4 \* \* \* \* \*  
5 SPERO HARITATOS,  
6 Plaintiff,  
7 -vs- Index No.:  
8 05 CIV 930 (DNH/GJD)

8 HASBRO, INC. and  
9 TOYS "R" US-NY LLC,  
10 Defendant.

11 \* \* \* \* \*

12  
13 Examination Before Trial of  
14 SPERO T. HARITATOS, Plaintiff, held at  
15 the offices of BOND, SCHOENECK & KING,  
16 PLLC, Syracuse, New York, on May 17,  
17 2006, before MELISSA A. LANNING, Court  
18 Reporter and Notary Public in and for  
19 the State of New York.  
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<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 For the Plaintiff: 4 WALL, MARJAMA &amp; BILINSKI, LLP Attorneys at Law 101 South Salina Street, Suite 400 5 Syracuse, New York 13202 BY: ROBERT E. PURCELL, ESQ. 6 7 8 For the Defendant, Hasbro, Inc.: PATTERSON, BELKNAP, WEBB &amp; TYLER, 9 LLP Attorneys at Law 1133 Avenue of the Americas 10 New York, New York 10036-6710 BY: MICHAEL D. SANT'AMBROGIO, ESQ. 11 12 For the Defendant, Toys "R" Us - NY, LLC: 13 BOND, SCHOENECK &amp; KING, PLLC Attorneys at Law 14 One Lincoln Center Syracuse, New York 13202 15 BY: JOHN G. MCGOWAN, ESQ. 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 3 EXHIBITS 4 Number Description Page 5 10 4/30/74 Contract 58 6 11 5/3/74 Contract 58 7 12 1976 Trademark Registration 72 8 13 Photocopy of Original Turkey Joint Label 72 9 10 14 Interrogatory Responses 92 11 12 16 Wholesale Receipt from Nora's Candy Shop 104 13 17 Photocopy of Photograph 170 14 18 Compilation of Photographs of Candyland Candy Turkey Joints jars, boxed candies, etc. 143 15 19 Compilation of Newspaper Articles 173 16 17 20 Compilation of Letters, re: Orders of Turkey Joints 175 18 21 Photocopy of Hasbro's Candyland mark 308 19 20 22 Photocopy of Hasbro's Candyland mark 308 21 30 1992 Application to Register Candyland 162 22 23 33 2005 1040 with Attached Schedules, 11 pgs. 164 24 * * * 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 EXAMINATIONS 3 Witness: Page 4 SPERO T. HARITATOS 5 EXAMINATION BY MR. SANT'AMBROGIO . . . . 8, 305 6 EXAMINATION BY MR. MCGOWAN . . . . . 208, 321 7 8 9 * * * 10 11 12 EXHIBITS 13 Number Description Page 14 1 First Set of Requests to Plaintiffs 58 15 16 2 TTAB Deposition Transcript of Spero T. Haritatos 305 17 4 1982 Trademark Application 22 18 5 Specimen from 1982 Application for Trademark 41 19 20 6 1990 Certificate of Registration 29 21 7 Compilation of Declarations 34 22 8 Certificate of Authority 48 23 24 (CONT'D ON NEXT PAGE) 25</p>	<p style="text-align: right;">Page 5</p> <p>1 2 REQUESTS 3 4 1. Page 70, Line 22: Q. Have you searched for that business certificate? 5 A. Yes. Q. And did you find it? 6 A. Yes. Q. And where is it? 7 A. It's not with me right now. Q. Did you give it to your lawyer? 8 A. I believe so. Q. And this is a business certificate for 9 Candyland -- A. Candyland. 10 Q. -- dating from 1973? A. Yes. 11 Q. We'll ask that your lawyer produce that. MR. PURCELL: If I have it, have 12 had it at any time, I'm sure it was produced. 13 MR. SANT'AMBROGIO: We have no business certificate from Candyland in 14 1973. 15 2. Page 235, Line 13: Q. Do you have any -- do you have the documents 16 by which that tax identification number was applied for? 17 A. I don't think so. Q. I would ask you, sir, to make a search for 18 any document applying for that tax identification number, to provide them to Mr. Purcell; and we will ask 19 for those, and of course we will do it formally. 20 21 22 * * * 23 24 25</p>

<p style="text-align: right;">Page 6</p> <p>1 SPERO T. HARITATOS 6</p> <p>2 IT IS HEREBY STIPULATED by and</p> <p>3 between counsel for the respective</p> <p>4 parties that this Deposition is to be</p> <p>5 held pursuant to the Federal Rules of</p> <p>6 Civil Practice; that the presence of a</p> <p>7 Referee is waived; that the filing of</p> <p>8 the minutes are waived; that the witness</p> <p>9 may be sworn by Melissa A. Lanning,</p> <p>10 Court Reporter and Notary Public in and</p> <p>11 for the State of New York; and that all</p> <p>12 objections, except those as to form, are</p> <p>13 reserved until the time of trial.</p> <p>14 * * *</p> <p>15</p> <p>16 VIDEOGRAPHER: My name is</p> <p>17 Christine Clark for Video Vision,</p> <p>18 13 Chestnut Street Clinton, New York.</p> <p>19 Today's date is May 17th, 2006, and the</p> <p>20 time is 9:28 a.m. This testimony is</p> <p>21 being taken at One Lincoln Center,</p> <p>22 Syracuse, New York. The caption of the</p> <p>23 case is Spero Haritatos, Plaintiff</p> <p>24 versus Hasbro, Incorporated, and Toys</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 SPERO T. HARITATOS 8</p> <p>2</p> <p>3 EXAMINATION BY MR. SANT'AMBROGIO:</p> <p>4 Q. Good morning, Mr. Haritatos.</p> <p>5 A. Good morning.</p> <p>6 Q. How are you today?</p> <p>7 A. Good. And yourself?</p> <p>8 Q. Good. We have before met; have we not?</p> <p>9 A. Yes, we have.</p> <p>10 Q. In fact, I took your deposition in February</p> <p>11 or January of 2005, correct?</p> <p>12 A. I think it was February.</p> <p>13 Q. February of 2005?</p> <p>14 A. Right.</p> <p>15 Q. Okay. Thank you. I know we went over some</p> <p>16 of the ground rules of the deposition the last time but</p> <p>17 I want to kind of go over them once more to make sure</p> <p>18 they're in your head. If you do not hear any part of</p> <p>19 the question I ask you, please ask me to repeat the</p> <p>20 question or ask the court reporter to repeat it. If</p> <p>21 you don't understand a question, please let me know,</p> <p>22 and I will attempt to rephrase the question so that</p> <p>23 it's understandable to you.</p> <p>24 Please allow me to finish asking all of my</p> <p>25 questions before you answer. The court reporter is</p>
<p style="text-align: right;">Page 7</p> <p>1 SPERO T. HARITATOS 7</p> <p>2 "R" Us New York, LLC, Defendants.</p> <p>3 This witness is Spero Haritatos.</p> <p>4 This testimony is being taken on behalf</p> <p>5 of the defendant and is being recorded</p> <p>6 in the digital format at the standard</p> <p>7 play mode.</p> <p>8 Will counsel please state their</p> <p>9 appearance for the record.</p> <p>10 MR. PURCELL: This is Bob Purcell</p> <p>11 representing the plaintiff,</p> <p>12 Spero Haritatos.</p> <p>13 MR. SANT'AMBROGIO: Michael</p> <p>14 Sant'Ambrogio from Patterson, Belknap</p> <p>15 representing the defendant, Hasbro,</p> <p>16 Incorporated.</p> <p>17 MR. MCGOWAN: John McGowan, Bond,</p> <p>18 Schoeneck &amp; King of Syracuse. We</p> <p>19 represent the defendant Toys "R" Us-NY,</p> <p>20 LLC.</p> <p>21 VIDEOGRAPHER: Thank you.</p> <p>22</p> <p>23 S P E R O T. H A R I T A T O S, having been called</p> <p>24 as a witness, being duly sworn, testified as</p> <p>25 follows:</p>	<p style="text-align: right;">Page 9</p> <p>1 SPERO T. HARITATOS 9</p> <p>2 going to be recording everything that both of us say</p> <p>3 today, and we want to make sure it's easy for her to</p> <p>4 record all of that accurately.</p> <p>5 Also, in order for her to do that, I need</p> <p>6 all of your responses to be verbal. So I know we all</p> <p>7 have a tendency to nod our heads or shake our heads in</p> <p>8 response to answers, but please try to answer questions</p> <p>9 verbally. Do you understand all of that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Thank you. Have you ever been</p> <p>12 deposed before?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you mentioned before that I</p> <p>15 deposed you last year, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And what was that deposition in</p> <p>18 connection with?</p> <p>19 A. With the -- the Hasbro case and the Toys "R"</p> <p>20 Us.</p> <p>21 Q. Was that in -- was that -- are you sure</p> <p>22 about that? I think -- wasn't it the Hasbro -- the</p> <p>23 trademark opposition between yourself and Hasbro?</p> <p>24 A. Right. It was -- yes, the opposition</p> <p>25 between the trademark with Hasbro.</p>

<p style="text-align: right;">Page 70</p> <p>1 SPERO T. HARITATOS 70</p> <p>2 Q. Now, did the Liberty Lane restaurant sell</p> <p>3 turkey joints?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And they sold the turkey joints made</p> <p>6 by your father?</p> <p>7 A. Correct.</p> <p>8 Q. So your father made turkey joints for them</p> <p>9 after 1974?</p> <p>10 A. My mother and father, correct.</p> <p>11 Q. Your mother and father. And they sold it --</p> <p>12 they made them under the business name Nora Haritatos,</p> <p>13 correct?</p> <p>14 A. Candyland.</p> <p>15 Q. Do you have any reason to believe that they</p> <p>16 used the Candyland name to sell the goods?</p> <p>17 A. I believe my -- I think it was registered</p> <p>18 or -- either a d/b/a was formed in '73, or business</p> <p>19 certificate, I believe.</p> <p>20 Q. Do you own that business certificate?</p> <p>21 A. No, I don't.</p> <p>22 Q. Have you searched for that business</p> <p>23 certificate?</p> <p>24 A. Yes.</p> <p>25 Q. And did you find it?</p>	<p style="text-align: right;">Page 72</p> <p>1 SPERO T. HARITATOS 72</p> <p>2 BY MR. SANT'AMBROGIO:</p> <p>3 Q. I'd like to introduce what's been marked as</p> <p>4 Defendant's Exhibit 12, and I'll also introduce what's</p> <p>5 been marked as Defendant's Exhibit 13.</p> <p>6 (Whereupon, Exhibit Numbers 12</p> <p>7 and 13 were marked for identification,</p> <p>8 this date.)</p> <p>9 BY MR. SANT'AMBROGIO:</p> <p>10 Q. Defendant's Exhibit 12 is a 1976</p> <p>11 registration for a trademark, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And it's a registration for the Original</p> <p>14 Thin Shell Candy Turkey Joints trademark, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And this was registered by</p> <p>17 Nora Haritatos, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And she filed to register this mark in 1976,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And that was Nora Haritatos located</p> <p>23 at 321 North Doxtater Avenue, correct?</p> <p>24 A. Correct.</p> <p>25 Q. But we can't tell from this document whether</p>
<p style="text-align: right;">Page 71</p> <p>1 SPERO T. HARITATOS 71</p> <p>2 A. Yes.</p> <p>3 Q. And where is it?</p> <p>4 A. It's not with me right now.</p> <p>5 Q. Did you give it to your lawyer?</p> <p>6 A. I believe so.</p> <p>7 Q. And this is a business certificate for</p> <p>8 Candyland --</p> <p>9 A. Candyland.</p> <p>10 Q. -- dating from 1973?</p> <p>11 A. Yes.</p> <p>12 Q. We'll ask that your lawyer produce that.</p> <p>13 MR. PURCELL: If I have it, have</p> <p>14 had it at any time, I'm sure it was</p> <p>15 produced.</p> <p>16 MR. SANT'AMBROGIO: We have no</p> <p>17 business certificate from Candyland in</p> <p>18 1973.</p> <p>19 MR. PURCELL: I'll double-check,</p> <p>20 but -- first of all, whether I have it.</p> <p>21 Second of all, whether I do have it,</p> <p>22 whether it was sent and produced to</p> <p>23 Hasbro.</p> <p>24 MR. SANT'AMBROGIO: Okay. Thank</p> <p>25 you.</p>	<p style="text-align: right;">Page 73</p> <p>1 SPERO T. HARITATOS 73</p> <p>2 Nora Haritatos was an individual or a business, can</p> <p>3 we?</p> <p>4 A. No.</p> <p>5 Q. Okay. And if you could turn to Defendant's</p> <p>6 Exhibit 13, you produced this in connection with the</p> <p>7 Trademark Trial and Appeal Board proceeding, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And again in connection with this</p> <p>10 litigation, correct?</p> <p>11 A. Correct.</p> <p>12 Q. So this was something that you found in your</p> <p>13 records, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Where did you find it?</p> <p>16 A. I found it in a file of old documents and</p> <p>17 papers that I was going through.</p> <p>18 Q. Okay. And how did you come to posses this</p> <p>19 document?</p> <p>20 A. I'm not sure. I think it was from a</p> <p>21 customer.</p> <p>22 Q. And do you remember when the customer gave</p> <p>23 it to you?</p> <p>24 A. No, I don't.</p> <p>25 Q. Okay. And what is this?</p>



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**Robert E. Purcell**  
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June 1, 2006

**BY FIRST CLASS MAIL**


Michael D. Sant'Ambrogio, Esq.  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036-6710

**Re: Haritatos v. Hasbro  
Our File No. 115\_003**

Dear Michael:

As part of Spero Haritatos's production of documents, I have enclosed documents bearing Bates nos. STH000500-00532.

Very truly yours,  
**WALL MARJAMA & BILINSKI LLP**



Robert E. Purcell

REP/jml  
Encl.

# Business Certificate

**I Hereby Certify** that I am conducting or transacting business under the name or designation of \_\_\_\_\_

CANDYLAND, 321 North Doxtater Street,

at Rome  
State of New York.

County of Oneida

*My full name is\**

TASOS HARITATOS

and I reside at

321 North Doxtater Street  
Rome, New York

~~Further, during the time the success of the endeavor is~~

the person or persons were to perform such duties and a duty to carry out and work  
therein and to use the

FILED  
NOTARY PUBLIC  
INTERIOR - 1 PM 12:09  
BY \_\_\_\_\_

**CERTIFIED COPY**

In Witness Whereof, I have this 27th day of February 1976,  
made and signed this certificate.

Taxos. Habitat

State of New York.  
County of Oneida

$$\left. \begin{array}{l} \text{S.S.:} \\ \text{S.S.:} \end{array} \right\}$$

On this 27th day of February 19 76 , before me personally appeared

TASOS HARITATOS

to me known and known to me to be the individual described in and who executed  
the foregoing certificate, and he thereupon duly acknowledged to me that  
he executed the same.

James P. Kehoe, Jr.  
James P. Kehoe, Jr. Notary Public  
Oneida County, My commission expires 3/30/76

\*If under 21 years of age, state "I am.....years of age".

STH 000523

173

INDEX No.

# Certificate

听

TASOS HARITATOS

CONDUCTING BUSINESS UNDER  
THE NAME OF

CANDYLAND

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CERTIFICATES OF AMENDMENT AND OF DISCONTINUANCE

Date Filed

Nature of Paper

**STH 000524**